

REMARKS

Claims 1-8, 10, 12, 13 and 17-24 are currently pending. Claim 21 is currently amended to correct for antecedent basis and to provide clarification to the enumerated steps for preparing a catheter. Support for these claim amendments is found in the original claims as well as on page 5, lines 7-11, and on page 6, lines 14-21, of the specification. No new matter is added by way of this amendment.

The Examiner has maintained the provisional rejection of claims 1-8, 10, 12, 13, and 17-24 under a provisional nonstatutory double patenting rejection as obvious over application No. 10/600,257 (the '257 application'). For reasons of record, the Examiner maintains that one having ordinary skill in the art would have expected similar antimicrobial properties from the instantly claimed catheter, given the claims of the '257 application.

In response, Applicants respectfully submit that since the only remaining issue is the provisional rejection, and since the present application is the earlier filed application, the provisional rejection should be withdrawn. MPEP 804(I)(B)(1) states the following:

If a "provisional" nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection remaining the earlier filed of the two pending applications, while the later-filed application is rejectable on other grounds, the examiner should withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer.

The present application was filed December 22, 2000, whereas the '257 application was filed June 20, 2003. The '257 application remains pending with an Office Action issued September 29, 2005, having rejections on the basis of 35 U.S.C. § 102(b). While a response to the Action was filed November 28, 2005, the rejections have not yet been withdrawn. Furthermore, Applicants note that a terminal disclaimer was filed in the '257 application on March 24, 2005 against the present application. As such, the present rejection should be withdrawn and no terminal disclaimer required in the present application.

In view of the above amendments and remarks, it is respectfully requested that the application be reconsidered and that all pending claims be allowed and the case passed to issue. If there are any other issues remaining which the Examiner believes could be resolved through either a Supplemental Response or an Examiner's Amendment, the Examiner is respectfully requested to contact the undersigned at the telephone number indicated below.

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Applicants believe that aside from the fee for the three-month extension of time, no additional fees are due. If however additional fees are due, the Commissioner is hereby authorized to charge payment of fees or to credit any overpayment associated with this communication to Deposit Account No. 02-4377.

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Respectfully submitted,

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